

April 24, 2019

**Lauren F. Goldberg**  
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BY ELECTRONIC MAIL ONLY (70225-48976118@requests.muckrock.com)

Mr. Danforth Kelly  
Muck Rock News  
DEPT MR 70225  
411A Highland Avenue  
Somerville, MA 02114-2156

Re: Records Request Dated March 6, 2019, As Modified on April 11, 2019 – E-mails

Dear Mr. Kelly:

As I previously advised, this office serves as Town Counsel to the Town of Weston, Massachusetts (“Town”). The Town received your March 6, 2019 request for records, e-mailed to Town Clerk and Records Access Officer Deborah Davenport. Specifically, at that time, you requested, “Copies of all e-mails (including attachments) sent by Douglas Gillespie or received by Douglas Gillespie from August 1, 2018 to March 5, 2019. As you know, the Town sent an initial response to the request on March 20, 2019, along with a good faith estimate. Thereafter, on April 11, 2019, as offered in the Town’s initial March 20, 2019 response, you modified your request to now only seek the following records:

“I would like to limit the scope of this request to emails sent or received by Selectman Douglas Gillespie pertaining to 40B, 40B projects, potential 40B projects, and 751 Boston Post Road.”

Please allow this letter to serve as the Town’s supplemental response to your request following such modification. In this response, the Town hereby expressly incorporates all potential exemptions outlined in its March 20, 2019 response that may be applicable following its further review of records in response to this modified request following the payment of applicable fees.

### **Responsive Records**

The Town has reviewed your modified request, and based upon its initial review, anticipates that it has responsive records. Responsive records subject to mandatory disclosure under the Public Records Law will be provided upon payment of any applicable fees (addressed below). Where permitted by law, however, such records or material contained therein may be withheld or redacted under any of the exemptions to the Public Records Law, other applicable provisions of law, and/or common law privileges, such as the attorney-client privilege. See, e.g., G.L. c. 4, §7(26); Suffolk Construction Co. v. Div. of Capital Asset Mgmt., 449 Mass. 444, 449-450 (2007); 950 CMR 32.06(3). The Town will, of course, provide copies of responsive records, redacted as appropriate, following receipt of the fee, as outlined below.

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Please be advised that the Town's duty to respond to records requests extends only to records that are in existence and in the custody of the Town, and the Town is under no obligation to create records in response to your request. Furthermore, the Town is not required to answer questions in response to a public records request. See "A Guide to the Massachusetts Public Records Law," January, 2017, published by the Secretary of the Commonwealth, at page 3.

### **Fee Estimate Following Modification**

Following the Town's review of your April 11, 2019 modification, the Town anticipates producing the following categories/types of records in response to your modified Request: non-privileged, non-exempt, e-mails or portions thereof for the specified time period "sent or received by Selectman Douglas Gillespie pertaining to 40B, 40B projects, potential 40B projects, and 751 Boston Post Road." Your request spans a period of over seven months, and seeks not only e-mails but also attachments. The search for responsive records based on the modification by the Town's IT staff took ½ hour, and produced more than 80 e-mails (we cannot say for sure that each e-mail is a unique record until we review the same), with more than 147 pages of records, excluding attachments.

More significantly, each email and attachment requires review to analyze whether it is subject to redaction or withholding under the attorney-client privilege or other applicable exemptions to the Public Records Law. For the reasons indicated in the "Summary of Bases for Anticipated Withholding or Redacting of Responsive Records", outlined in the Town's initial response, which is incorporated by reference herein, this segregation and/or redaction work can only be performed by the Town Manager or an attorney representing the Town to make reasoned determinations as to the status of ongoing pending matters and the applicability of the attorney-client privilege, the Open Meeting Law as it operates through Exemption (a) of the Public Records Law, Exemption (d) to the Public Records Law concerning deliberative positions still being developed, including litigation matters, and Exemption (c) concerning personal or personnel matters, and the like.

Following such modification, please be advised that IT Staff, the Town Manager and this office's hourly rate exceeds \$25/hour, but has been reduced to the same for purposes of this good faith estimate. Based on the Town's initial diligent review of the modification, it is estimated that it will take two (2) hours to conduct such analysis, segregation (as required by law) and where appropriate, redaction. Thus, to review the e-mails only, the Town anticipates that it will take two (2) hours to locate responsive records, including attachments, based on the modified request submitted on April 11, 2019, and make redactions required by law. Additionally, the IT staff utilized ½ hour of time, or \$12.50, to locate responsive records. Therefore, the total fee estimate is **\$62.50** for employee search, segregation and redaction time (as required by law). Upon receipt of payment in that amount made directly to the Town of Weston, the Town will continue the work necessary to respond fully to your request. Please note that a records custodian is not obligated to

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perform the work necessary to compile or provide responsive records until all fees are paid. See 950 CMR 32.06(2)(f); see also Determination of the Supervisor of Records, Dated August 7, 2017, SPR17/1005. Thus, upon receipt of payment of the fee estimate, the Town anticipates it will take up to 15 business days to fully respond to your request. The Town anticipates providing the records in an electronic format; however, because redactions may be required, the Town will update its estimate if additional employee time or significant printing is required (\$.05/page).

Until such time as the estimated fee is paid based on the modified request and the Town completes its work in searching for, segregating, and redacting (where appropriate and required by law) responsive records, the Town cannot fully determine the extent to which documents will be withheld or redacted. Nonetheless, based upon its superior knowledge of the contents of responsive records generally, the Town anticipates redacting or withholding records, under any of the exemptions to the Public Records Law, as well as, as applicable, the attorney-client privilege and/or work product doctrine. See, e.g., G.L. c.4, §7(26); see Suffolk Construction Co. v. Div. of Capital Asset Mgmt., 449 Mass. 444, 449-450 (2007) (application of attorney-client privilege to governmental entities); 950 CMR 32.06(3); DaRosa v. City of New Bedford, 471 Mass. 446 (2015), (application of work product doctrine to governmental entities). Although the Town previously identified in its initial response the anticipated bases for withholding or redacting responsive records, and expressly incorporates such justification in this supplemental response, the Town reserves the right to identify and assert any other applicable exemptions and/or common law privileges. In accordance with G.L. c.66, §10(b)(iv), nothing herein shall limit the Town's ability to redact or withhold information in accordance with state or federal law. If any records are redacted or withheld following the Town's search and analysis of the records sought in the modified request, the Town will provide a basis for same.

As previously advised, you have the right to appeal this response to the Supervisor of Records under G.L. c.66, §10A(a) and the right to seek judicial review of an unfavorable decision by commencing a civil action in the superior court under G.L. c.66, §10A(c).

If you would like to modify the request further, either in time frame, or scope, please do not hesitate to contact me.

Very truly yours,

  
Lauren F. Goldberg

LFG/aem

cc: Town Clerk/Records Access Officer (by e-mail only: [davenport.d@westonmass.org](mailto:davenport.d@westonmass.org))  
Town Manager (by e-mail only; [Gaumond.l@westonmass.org](mailto:Gaumond.l@westonmass.org))

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